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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

O.A.No.1110 OF 1996.

DATE OF ORDER:

9.12.1998

Between:

B.V.Ramana Rao.

.. Applicant

and

1. The Chief of Naval Staff,
Naval Head Quarters,
New Delhi-110 011.

2. The Flag Officer Commanding-in-
Chief, Eastern Naval Command,
Visakhapatnam-14.

3. Sri Dussasan Naik,
Telephone Operator, Grade-I,
I.N.S. Chilka, Eastern Naval Command,
Visakhapatnam.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.M.P.Chandramouli

COUNSEL FOR THE RESPONDENTS:: Mr.N.R.Devaraj

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

: ORDER :

(AS PER HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (J))

None appeared for the Applicant. The applicant was also absent when the OA was taken up for hearing. Heard Mr.N.R.Devaraj, learned Standing Counsel for the Respondents 1 and 2. Though notice has been served personally on the Respondent no.3, he has remained absent.

2. This is an Application under section.19 of the Administrative Tribunals Act. The Application was filed on 3-9-1996.

3. The brief facts of the case are as follows:-

a) The applicant was appointed as a Telephone Operator Grade-II on 1-4-1980 in the office of the Naval Dockyard, Visakhapatnam. He worked there till 15-3-1993. He was transferred to Eastern Naval Command(V). His services were regularised with effect from 1-12-1982.

b) The Respondent No.3 was appointed as Telephone Operator, Grade-II on 15-4-1980 and was posted to I.N.S. Chilka under the same Eastern Naval Command(V). His services were regularised from 15-4-1980, i.e., from the date of his joining the service.

c) Due to discrimination in the matter of regularisation, certain employees approached this Tribunal in OA.No.373 of 1995. On 23-3-1995 this Tribunal decided the OA directing the respondents to regularise the employees taking the date of appointment as the criteria for regularisation.

d) Accordingly, the services of the applicant was regularised from a retrospective date i.e., from 1-4-1980 by proceedings of the Chief Staff Officer in CE/9303/186, dated:15-6-1995.

e) It is stated that the provisional seniority list of Telephone Staff working in the Eastern Naval Command was circulated in CE/0762/T0, dated:12-6-1987. The

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applicant submits that in the said seniority list his name was shown at Serial No.29 and the name of the Respondent No.3 was shown at Serial No.32. He submits that the said seniority was in order and became final.

f) In compliance with that direction given by this Tribunal in OA.No.373 of 1995, the respondents revised the seniority list of Telephone Operator, Grade-I and II and published in Proceedings No.CE/0762/T.O.COMMEN(V), dated:25-11/5-12-1995. In the said list the name of the applicant was shown at Serial No.8 in the seniority list of Telephone Operator, Grade-II, whereas the Respondent No.3 was shown at Serial No.17 in the seniority list of Telephone Operator, Grade-I. The applicant submits that the seniority list of Telephone Operator, Grade-I contained a note which reads as follows:-

"Regularisation/Promotion at out stations were regulated when personnel at COMMEN(V) not opted with reference to Letter CE/0762/T.O, dated:18-1-91 and 26-3-91."

g) The applicant submits that he was not aware of the letters issued by the respondents during January and March, 1991 and that his option was not called for.

h) The applicant submitted a representation dated: 22-12-1995 to the Respondent No.2 for redressal of his grievance. There was no reply. He submitted further representation dated:30-12-1995 and 8-2-1995. The Flag Afsar in his letter CE/2009/A.36, dated:20-4-95 informed the applicant that the relative seniority

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would be looked into once the regularisation is effected in accordance with the direction given by this Tribunal in DA.No.373 of 1995 and also enquired with the applicant as to whether at any time he had claimed seniority over and above the Respondent No.3.

i) The applicant finally sent a legal notice as his representations were not responded to.

4. Hence, the applicant has filed this DA to declare the action of the respondents in promoting the 3rd respondent to Telephone Operator Grade-I ignoring the rights of the applicant who is senior to him as arbitrary, illegal and void, and consequently direct the respondents to promote the applicant to Telephone Operator Grade-I with effect from 10-4-1992 on which date Respondent No.3, who is junior to him was promoted to Telephone Operator Grade-I.

5. The respondents have filed their reply stating that the Telephone Operators employed at various Naval Units under the control of the Flag Officer Commanding-in-Chief in the Eastern Naval Command are on common command roster. That there are certain units which are out stations like INS Chilka in Orissa State, INS Rajali and INS Kattabomman in Tamilnadu State are having difficult conditions and thereby persons recruited locally are not in favour of taking up appointment at such out-stations mainly on account of the non-availability of family accommodations, non-entitlement of HRA etc.,. That was the position, persons locally recruited in meeting the requirements of the out stations were



regularised in the sanctioned billets exclusively out stations itself. The above situation of non-willing for appointment/transfer /transfer on promotion for filling up the vacancy at out stations still holds good and personnel in the command roster from Visakhapatnam in particular were expressing unwillingness and were not forthcoming for posting at out stations.

6. They state that the Respondent No.3 was appointed as Telephone Operator Grade-II at INS Chilka by local recruitment at Chilka on 15-4-1980 on casual basis and no one from Visakhapatnam was willing to work at INS Chilka on transfer. Hence, the Respondent No.3 was continued there on regularisation. They submit that there were few Telephone Operators working at Telephone Exchange at Visakhapatnam at that time and none of them came forward for working at INS Chilka mainly for the reason on non-availability of certain facilities at out stations. The Respondent No.3 by virtue of his seniority amongst the regular employees of Telephone Operator Grade-II got promotion to the post of Telephone Operator Grade-I at INS Chilka from 10-4-1992.

7. The applicant was regularised against the sanctioned billet on 1-12-1982. The applicant was one of the applicants in OA.No.373 of 1995. As per the directions in OA.No.373 of 1995, the applicants therein including the applicant were to be treated as having been regularised from the date of initial engagement as Casual Telephone Operator Grade-II and consequential benefits were to be calculated on notional basis and arrears accruing to the applicants were to be paid only with

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effect from 1-3-1994 i.e., One year prior to the filing of the said OA. The said direction was to be complied within three months from the date of receipt of a copy of that Order. Accordingly, vide Headquarters Letter CE/9303/186, dated:8-6-1995, the applicant herein was brought on to regular service in the establishment from the date of his initial engagement i.e., from 1-4-1980. They submit that when the Respondent No.3 was promoted as Telephone Operator Grade-I on 10-4-1992 alone, no one had challenged the method of regularisation adopted by the Eastern Naval Command. It is only in the year 1995, ^{and others} the applicant challenged the regularisation made from a subsequent date.

8. Merely because of the directions given in the OA the applicant cannot claim the seniority benefit above the respondent no.3, who was already in the grade of Telephone Operator Grade-I right from 10-4-1992. AS regards the letters issued on 18-1-1991 and 26-1-1991 the respondents submit that those letters have no relevance to the applicant for claiming promotion to the grade of Telephone Operator Grade-I on par with the respondent no.3 with effect from 10-4-1992.

9. The applicant during his service had not opted to work at out stations enumerated above. He could have himself volunteered to work at out stations.

10. Only on account of the directions given by this Tribunal in OA.No.373 of 1995, the applicant was given regularisation from a retrospective date, i.e., from 1-4-1980 and that cannot confer a right

to claim promotion to the grade of Telephone Operator Grade-I on par with the respondent no.3. Thus they submit that the OA is liable to be dismissed.

11. The factual position in this case are not in dispute. The applicant was appointed on 1-4-1980 and was regularised from 1-12-1982, whereas the respondent no.3 was appointed as Telephone Operator Grade-II on 15-4-1980 and posted to INS Chilka under the Eastern Naval Command(V). His services were regularised from 15-4-1980.

16. When the applicant was regularised from 1-12-1982 and when the respondent no.3 was regularised from 15-4-1980 i.e., from the date of his entry into service, the applicant had not challenged the regularisation of the respondent no.3 till he filed OA.No.373 of 1995. During this interval the respondent no.3 gained seniority and as stated by the respondents no one from the Telephone Operators working in Visakhapatnam was willing to work at out stations i.e., INS Chilka and that since the respondent no.3 was working at INS Chilka, was promoted to the post of Telephone Operator Grade-I by virtue of seniority on 10-4-1992. Thus it could be seen that the respondent no.3 was in the cadre of Telephone Operator Grade-I even before the applicant approached this Tribunal in OA.No.373 of 1995. Therefore, the seniority position once settled cannot be reopened or disturbed. Admittedly, the direction to give regularisation from the date of appointment was given by this Tribunal only on 23-3-1995. The applicant at best obtained benefits like regularisation from a retrospective date and not promotion from a retrospective date. As on

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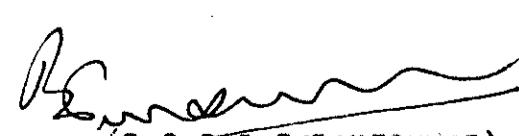
10-4-1992 the applicant was not within the zone of consideration for promotion to the cadre of Telephone Operator Grade-I. When that is so, and more over when no one had opted to work in the cadre of Telephone Operator Grade-I at INS Chilka, the respondent no.3 was promoted by virtue of his seniority with effect from 10-4-1992.

17. The applicant got regularization from an earlier date only because of the direction given by this Tribunal in OA No.373 of 1995. The directions given in the OA is not to the effect to consider their cases for promotion if some of his juniors were promoted to the higher grade. When that is so, it may not be proper for the applicant to claim promotion to the cadre of Telephone Operator Grade-I on par with respondent no.3. As already submitted by the respondents, the respondent no.3 was working at out stations INS Chilka and that by virtue of his seniority he got promotion.

18. In that view of the matter, the applicant cannot claim promotion on par with the respondent no.3. The respondent no.3 was promoted even earlier to the applicant approaching this Tribunal in OA. No.373 of 1995.

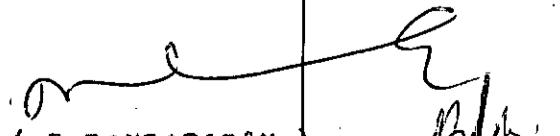
19. In view of the matter, we find no merit in this OA and the OA is liable to be dismissed.

20. Accordingly the OA is dismissed leaving the parties to bear their own costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDG)

DSN

DATED: 9.12.98


(R.RANGARAJAN)
MEMBER (ADMN)


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DA. 1110/96

Copy to:-

1. The Chief of Naval Staff, Naval Head Quarters, New Delhi.
2. The Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam.
3. One copy to Mr. M.P.Chandramouli, Advocate, CAT., Hyd.
4. One copy to Mr. N.R.Devaraj, Sr.CGSC., CAT., Hyd.
5. One copy to HBSJP M(J), CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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S/12/98
II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S.JAI PARAMESWAR :
M(J)

DATED: 9/12/98

ORDER/JUDGMENT

MAVR.A./C.P.NO.

in

OA.NO.

110/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

Durgadas (F) SRR

